

specific supporting sections of the application, and by citing legal authorities for the arguments made by Assignee.

The present Office Action maintains the section 112 rejection with regard to claims 76-80 (at least) and introduces a new argument, namely, that "claims 76-80 formed a separate group from the other claims" and must therefore "be definite and their meaning clear" without reference to the other claims. Assuming for the moment that reference to other claims is actually needed, the rejection is nonetheless improper because no legal authority is cited to support this argument. The undersigned is not aware of any authority to support the Office Action's argument. Indeed, the undersigned doubts that there is legal authority to support effectively marking portions of the specification (the claims are part of the specification, after all) as "off-limits" when reading the claims in light of the specification. However, the examiner is hereby invited to identify such legal authority in the next office action, if any such authority exists. Without any supporting authority, the rejection is clearly erroneous and should be withdrawn or reversed.

The Office Action asserts that claims 76-88 are indefinite, but it fails to individually address the specific supporting sections of the application, and the legal authorities, which Assignee cited in response to the previous office action. This basis of rejection is ripe for appeal.

#### **OFFICIAL NOTICE**

To the extent that the official notices in the Office Action assert technical knowledge but provide no suggestion or motivation for one of skill in the art to combine the asserted technical knowledge with other teachings from other sources, Assignee hereby challenges the Office to provide actual references and/or other evidences of such suggestions or motivations, pursuant to M.P.E.P. § 2144.03.

## SECTION 103

The Office Action makes rejections under Section 103 by relying on a combination of references: Staheli, Double-Take, and FrameRunner. But those references describe technologies which are not consistent with each other. For instance, FrameRunner “operates independently from the host processor so no CPU overhead is incurred”, FrameRunner at page 2, whereas “Double-Take’s source module, which runs on the production server, adds a minimal load to the server’s CPU.” Double-Take at page 7 under “Key Considerations”. The Office Action fails to recognize the apparent inoperability of bundling technology that requires a server CPU with technology that is independent of the server CPU.

Nor does the Office Action acknowledge the difficulty in trying to blend technologies that apparently operate on different granularities: Staheli works on “packets”, Double-Take refers often to “files”, and FrameRunner’s “function is accomplished directly from one Symmetrix disk system to another” suggesting that disk-level units such as sectors are used.

In this context, the Office Action’s brief statements are not sufficient to establish that one of skill would have combined the references. In view of the combination’s inoperability and its lack of supporting suggestion or motivation, the rejections under section 103 should be withdrawn or reversed.

## CONCLUSION

Assignee respectfully requests favorable reconsideration of the application. The claims should be allowed. If any claims are not allowed, then the next action should be made final. The undersigned invites a call from the Office if there are questions that might be answered by telephone.

Dated October 21, 2003.

Respectfully submitted,

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**CERTIFICATE OF FAX  
TRANSMISSION**

I hereby certify that this Response and Petition for 2-month extension are being faxed to the USPTO on October 21, 2003, to the number 703-746-7239:

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